

## Environmental Protection Agency

## § 265.171

mechanism. The Regional Administrator will notify the owner or operator of his determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this subpart. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of § 265.143, § 265.145, or § 265.147, as applicable.

(b) If a State-required mechanism is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart by increasing the funds available through the State-required mechanism or using additional financial mechanisms as specified in this subpart. The amount of funds available through the State and Federal mechanisms must at least equal the amount required by this subpart.

### **§ 265.150 State assumption of responsibility.**

(a) If a State either assumes legal responsibility for an owner's or operator's compliance with the closure, post-closure care, or liability requirements of this part or assures that funds will be available from State sources to cover those requirements, the owner or operator will be in compliance with the requirements of § 265.143, § 265.145, or § 265.147 if the Regional Administrator determines that the State's assumption of responsibility is at least equivalent to the financial mechanisms specified in this subpart. The Regional Administrator will evaluate the equivalency of State guarantees principally in terms of (1) certainty of the availability of funds for the required closure or post-closure care activities or liability coverage and (2) the amount of funds that will be made available. The Regional Administrator may also consider other factors as he deems appropriate. The owner or operator must submit to the Regional Administrator a letter from the State describing the nature of the State's assumption of responsibility together with a letter from the owner or operator requesting that

the State's assumption of responsibility be considered acceptable for meeting the requirements of this subpart. The letter from the State must include, or have attached to it, the following information: The facility's EPA Identification Number, name, and address, and the amount of funds for closure or post-closure care or liability coverage that are guaranteed by the State. The Regional Administrator will notify the owner or operator of his determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this subpart. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of §§ 265.143, § 265.145, or § 265.147, as applicable.

(b) If a State's assumption of responsibility is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart by use of both the State's assurance *and* additional financial mechanisms as specified in this subpart. The amount of funds available through the State and Federal mechanisms must at least equal the amount required by this subpart.

## **Subpart I—Use and Management of Containers**

### **§ 265.170 Applicability.**

The regulations in this subpart apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste, except as § 265.1 provides otherwise.

### **§ 265.171 Condition of containers.**

If a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of this part.

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### § 265.172 Compatibility of waste with container.

The owner or operator must use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.

### § 265.173 Management of containers.

(a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

(b) A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

[*Comment:* Re-use of containers in transportation is governed by U.S. Department of Transportation regulations, including those set forth in 49 CFR 173.28.]

[45 FR 33232, May 19, 1980, as amended at 45 FR 78529, Nov. 25, 1980]

### § 265.174 Inspections.

At least weekly, the owner or operator must inspect areas where containers are stored, except for Performance Track member facilities, that must conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5) of this part. The owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

[*Comment:* See § 265.171 for remedial action required if deterioration or leaks are detected.]

[71 FR 16910, Apr. 4, 2006, as amended at 71 FR 40275, July 14, 2006]

### § 265.175 [Reserved]

### § 265.176 Special requirements for ignitable or reactive waste.

Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line.

[*Comment:* See § 265.17(a) for additional requirements.]

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### § 265.177 Special requirements for incompatible wastes.

(a) Incompatible wastes, or incompatible wastes and materials, (see appendix V for examples) must not be placed in the same container, unless § 265.17(b) is complied with.

(b) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see appendix V for examples), unless § 265.17(b) is complied with.

(c) A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

[*Comment:* The purpose of this is to prevent fires, explosions, gaseous emissions, leaching, or other discharge of hazardous waste or hazardous waste constituents which could result from the mixing of incompatible wastes or materials if containers break or leak.]

### § 265.178 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a container in accordance with the applicable requirements of subparts AA, BB, and CC of this part.

[61 FR 59968, Nov. 25, 1996]

## Subpart J—Tank Systems

SOURCE: 51 FR 25479, July 14, 1986, unless otherwise noted.

### § 265.190 Applicability.

The requirements of this subpart apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in paragraphs (a), (b), and (c) of this section or in § 265.1 of this part.

(a) Tank systems that are used to store or treat hazardous waste which contains no free liquids and are situated inside a building with an impermeable floor are exempted from the requirements in § 265.193. To demonstrate the absence or presence of free liquids in the stored/treated waste, the following test must be used: Method 9095B